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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,905	04/14/2005	Aaldrik Engels	7392/84241	4422

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FITCH, EVEN, TABIN & FLANNERY  
P. O. BOX 18415  
WASHINGTON, DC 20036

EXAMINER

PADEEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/04/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/522,905

**Applicant(s)**

ENGELS ET AL.

**Examiner**

Carolyn A. Paden

**Art Unit**

1794

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17-22, 45-50 and 52-76 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-22, 45-50 and 52-76 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 8, 2008 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-22, 45-50, 52-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Budd (4,645,674).

A partial description of the subject matter in Budd was presented in the office action mailed April 7, 2006. Budd further discloses topped savory snack foods. In example 2, corn collets were placed in a seasoner with oil, cheddar cheese powder and salt. The sugar and water with other ingredients are sprayed onto the product. Finally the coated product is dried in a vacuum oven. Although maltodextrin, mono and disaccharides

are not specifically mentioned in this example, one of ordinary skill in the art would expect these ingredients to be in the binder composition because applicant has defined sugars to include these components at column 3, lines 35-45. Fructose is known to be a monosaccharide and sucrose is known to be a disaccharide. Claim 17 appears to differ from Budd in the recitation of the particle size of the topping and in the recitation of the specific amounts of maltodextrin and saccharides that are in the binder composition at step b. Although the particle size is not mentioned, it would have been obvious to modify the granule size of the powdered cheese in Budd to improve the visual appeal of the snack food. Also at column 4, lines 45-57, various toppings are contemplated and these would have been expected to vary in size. It would have been obvious to adjust the percent of maltodextrin in the binder composition according to the extent of sweetness desired in the snack food. It is very well known in the art that sucrose and fructose have a sweeter taste than maltodextrin.

The snack foods contemplated in Budd at column 1, lines 40-53 appear to include all of the snack foods mentioned in the claims. Maltodextrin is a well-known polysaccharide. Although the specific use of yeast as a flavor enhancer is not mentioned, it would have been obvious to

use yeast in a snack food to give the food a fresh baked flavor. Since the starting materials in Budd are snack foods, it would have been obvious to expect the dried snack to have been made by any of the variety of methods shown in claims 55 and 58.

Applicant has amended the claims to further define the composition of the coatings but Example III shows a solution with maltodextrin that has the dextrose equivalent of the claims. Applicant argues that the step b) coating excludes the inclusion of a sweetness suppressor. It is appreciated that lactisol and polysorbate are included in step b binder but Budd does not disclose either of these ingredients are essential to the creation of a binder coating for the product. So it is not seen that the presence or absence of lactisol or polysorbate are critical to the binder coating. Even though suppression of sweetness is a goal in Budd, no unobvious or unexpected result is seen from the preparation of a sweet product. The extent of sweetness desired in foods is an obvious matter of choice with regard to the particular extent of sweetness desired in a food.

Applicant has amended the claims to set forth a minimal level of the optional ingredients, salt and flavor enhancer. Salt is disclosed as a seasoning material for the product at column 4, lines 45-49. Although

flavor enhancers are not mentioned in Budd, it would have been obvious to expect the seasoning powders in Budd to enhance the flavor of the product.

Applicant argues that the claims require step a) of coating with a liquid mixture. In example II of Budd, step a) includes a step of coating with liquid oil and cheddar cheese. Applicant argues that Budd does not use a second coating step b). This is disagreed with. Example II shows a second step of coating with an aqueous solution of binder. The fact that Budd does not used maltodextrin in example II is not seen to constitute unobviousness. Budd draws equivalence between maltodextrin and sugar at column 3, lines 42-43.

Claim 17 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for 0.1 wt% to wt 5% salt and flavor enhancer, as disclosed on page 8, lines 18-24, does not reasonably provide enablement for up to 5 wt% salt and flavor enhancer. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

Application/Control Number: 10/522,905  
Art Unit: 1794

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